

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5764 of 1984

Date of decision: 7-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHORASI AND OLPAD TALUKA

Versus

GUJARAT INDUSTRIAL CO.OP.BANK LTD.

Appearance:

MR N. V. Anjaria for Petitioner
MR Chetan Pandya for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/10/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner is a cooperative Society, which is a member of the respondent Bank. As a member of the respondent bank it had entered into transaction of placing deposits with it. It has kept fixed deposit amount with the respondent Bank. It is not in dispute that the amount of F.D. has been given by the Bank to the accountant of the petitioner society, namely, M.V. Patel. The counsel for the petitioner does not dispute that Mr. M. V. Patel, accountant of the Society was regularly going to the Bank, withdrawing amounts and bringing amounts from the bank to the society. It appears that against the F.D.R. of the petitioner with the bank, Shri M. B. Patel has embezzled certain amount and as such the petitioner society filed lavad suit for recovery of Rs.1,81,981.26 ps. That lavad suit was dismissed by the Board of Nominee under its award dated 18-8-1981, This award has been challenged by the petitioner before the Gujarat Cooperative Tribunal, Ahmedabad, and that appeal has also been dismissed under order dated 10-7-1984. The counsel for the petitioner has admitted that against Shri M. B. Patel criminal case has been lodged, and he has been dismissed from service. However, he admits that no step whatsoever has been taken by the Society for recovery of this amount from Mr. M. B. Patel, accountant. Shri M. B. Patel was not made a party to these proceedings also. Taking it to be a case of negligence on the part of the bank suit has been filed for recovering the said amount. The bank has acted bona fide to give the amount to that person as he was coming to for the Society for withdrawal of its amounts. However, even if it is taken to be a case of negligence of the bank, as the counsel for the petitioner contended, then the proper course would be to file suit for damages and not the suit for recovery. It can not be said to be a case where the Bank has retained the amounts of the petitioner.

2. In the result the special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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